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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

In the matter of:

MARK W. BOSWORTH and LISA A.
BOSWORTH, husband and wife;

STEPHEN G. VAN CAMPEN and DIANE V.
VAN CAMPEN, husband and wife;

MICHAEL J. SARGENT and PEGGY L.
SARGENT, husband and wife;

ROBERT BORNHOLDT and JANE DOE
BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES, LLC, an
Arizona limited liability company;

3 GRINGOS MEXICAN INVESTMENTS, LLC, an
Arizona limited liability company;

Respondents.

Docket No. S-20600A-08-0340

RESPONDENTS
MICHAEL J. SARGENT
AND PEGGY L. SARGENT'S

RESPONSE TO
MOTION TO SET

Arizona Corporation Commission

DOCKETED

JUL -7 2009

DOCKETED BY

Respondents Michael J. Sargent and Peggy L. Sargent (collectively, the "Sargents") respectfully respond to the Securities Division's ("Division") Motion to Set. At this time, the Motion to Set is premature and should be denied. The motion is premature because numerous pending motions must be resolved, and because significant additional steps are needed before a hearing is conducted. Moreover, the Division's Motion to Set fails to conform to the requirements for motions to set and fails to state any basis for granting the motion.

There are at least five (5) pending motions before the Commission in this docket:

- (1) Sargents' Motion to Dismiss filed August 15, 2008;
- (2) Sargents' Motion to Stay filed August 21, 2008;
- (3) Van Campen's Joinder in Sargents' Motion to Stay filed August 28, 2008;
- (4) Van Campen's Motion to Quash Subpoena filed August 28, 2008; and

1 (5) Sargents' Motion to Quash Subpoena filed March 17, 2009.

2 These motions are all inter-related to some extent, and some of them raise complex legal issues. It
3 is appropriate for the Commission to schedule oral argument on these motions. However, until
4 these motions are resolved, it is not appropriate to schedule a hearing – some of the motions raise
5 threshold questions as to whether it is appropriate for this case to proceed, and those questions
6 should be resolved before a hearing is scheduled. In addition, the Administrative Law Judge will
7 require time to draft a written procedural order explaining the Commission's rulings on these
8 motions. Further, depending on the ALJ's rulings, interlocutory appeals or special actions may be
9 filed, and it is appropriate to build time into the schedule for those processes.

10 In reference to the pending motions to quash subpoenas, the Sargents note that by filing
11 their Motion to Set, the Division is essentially stating that they are ready to proceed to trial and that
12 therefore they do not need the information requested in the subpoena.

13 Once the pending motions are finally resolved, numerous additional steps are needed before
14 a hearing is scheduled. For example, a discovery schedule should be established, and lists of
15 witnesses and exhibits should be exchanged. Only then should a hearing be scheduled.

16 Further, the Division's Motion to Set does not contain the minimum content required for
17 motions to set. The Commission's rules do not explicitly mention motions to set. However, the
18 Commission's rules incorporate the Rules of Civil Procedure ("Civil Rules"). *See* A.A.C. R14-3-
19 101.A (incorporating Civil Rules by reference); A.A.C. R14-3-106.K ("Motions shall conform
20 insofar as practicable with the Rules of Civil Procedure..."). Thus, motions to set may be filed to
21 the extent they conform to the Civil Rules. The Civil Rules require motions to set filed by the
22 Plaintiff to include a "Certificate of Readiness". Civil Rule 38.1(a). The Certificate of Readiness
23 includes a statement that discovery is complete or there "will be a reasonable opportunity to
24 complete" discovery before trial. We are not aware of any reasonable basis for making such a
25 statement at this time. As the party who filed the case and is seeking affirmative relief, the
26 Division is the Plaintiff in this case. The Division's Motion to Set does not contain a Certificate of
27 Readiness and should therefore be denied.

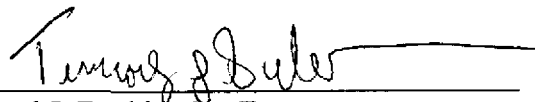
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1 Lastly, the Division's Motion to Set is only one sentence. It does not state any basis for
2 granting it, other than the Division's own desires. It cites no legal authority and refers to no facts.
3 Thus, the Division's Motion to Set simply fails to provide a basis upon which it can be granted.

4 The Division's motion to set is premature due to the numerous pending motions, and it also
5 fails to contain the required Certificate of Readiness or to state any basis upon which it can be
6 granted. Accordingly, the Divisions' Motion to Set should be denied.

7
8 RESPECTFULLY SUBMITTED this 7th day of July, 2009.

9 ROSHKA DeWULF & PATTEN, PLC

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11 By 

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23 ORIGINAL and thirteen copies of the foregoing
24 filed this 7th day of July, 2009 with:

25 Docket Control
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1 Copy of the foregoing hand-delivered
2 this 7th day of July, 2009 to:

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33 Sargent.ACC/pld/Response to Motion to Set.doc